

MINUTES OF THE MEETING OF THE IFCAI COUNCIL

held at Le Palace Hotel, Gammarth, Tunis

at 9.15am, 27 May 2009

PRESENT

Ulf Franke (President)
Stefano Azzali
Diana Droulers
Jason Fry
William Slate
Adrian Winstanley
Nassib Ziadé

1. PRESIDENT'S WELCOME

1.1 The President thanked all those present for attending.

1.2 He said that this was a poignant occasion without Dr Aboul-Enein, who had so tragically been killed in a traffic accident, in Washington, shortly after the previous meeting of the Council.

1.3 The meeting acknowledged the great loss at Dr Aboul-Enein's passing.

1.4 The meeting also acknowledged the great efforts put in by Dr El Behi, and his assistants, on behalf of CCAT, in organising the IFCAI conference, at which attendance was expected to be as high as 350.

2. MINUTES OF THE PREVIOUS MEETING

2.1 The Minutes of the previous Council meeting, held in New York, on 13 November 2008, and circulated on 14 May 2009, were approved by the Council, and were signed by the President.

3. MATTERS ARISING

3.1 There were no matters arising that were not covered by separate agenda items.

4. IFCAI CONSTITUTION

4.1 The meeting turned to the draft amended Constitution, which had previously been circulated to Council members and to the general membership, with the intention that the amendments be approved by the General Assembly, following this meeting.

4.2 Stefano Azzali tabled an email that he had sent to Adrian Winstanley and to the President shortly before this meeting, raising a number of concerns about the Constitution and its possible (mis)interpretation, including what he regarded as room for confusion and procedural difficulties with the selection and appointment of members of the Council.

4.3 This led the meeting to a more general review of the Constitution, rather than it focus only on the proposed new text at Articles E.3 and E.4, which were to have been the sole subject of discussion at the General Assembly.

4.4 Stefano said, and all agreed, that the Council needed to be alert to the fact that some IFCAI members would sell themselves to potential users of their services, on the basis of their membership of IFCAI.

4.5 It was agreed, given the absolute discretion of the Council to refuse membership, or to remove existing members on an assessment of their *bona fides*, that some specific criteria for membership should be formulated, whether only for the internal use of the Council, or for general publication.

4.6 It was agreed, however, that checking members against established criteria could prove difficult, being dependent largely upon members' providing accurate and objective information.

4.7 The meeting also debated the desirability, or otherwise, of maintaining the distinction between institutional members and general members, a distinction which some initially thought irrelevant, whilst others thought it important, if only for the benefit of parties reviewing IFCAI membership when drafting arbitration clauses.

4.8 After further discussion, it was agreed that a wholesale review of the Constitution should be undertaken by a committee comprising Bill Slate, Jason Fry and Adrian Winstanley, with Bill chairing.

Note Following the recommendation of the nominating committee that he be appointed a Vice President of the Council, it was agreed to invite Dr Elaraby to join this committee, should the General Assembly confirm his appointment.

5. ELECTIONS TO THE COUNCIL

5.1 At the President's invitation, Bill Slate, on behalf of the election committee (Bill Slate, Diana Droulers and Jason Fry) presented the committee's recommendations for discussion.

5.2 Bill confirmed that the committee had sought diligently to comply with its mandate and had considered all candidates proposed by IFCAI members, in response to Adrian's two exhortations, along with others whose names had arisen during the course of their six deliberations.

5.3 In total, 24 candidates had been considered, and whilst these included the members of the committee themselves, each had recused himself or herself of any part in the consideration of his or her candidacy.

5.4 The committee had been guided by the requirement of the IFCAI Constitution that due regard be given to a balanced international representation, and the committee had also considered institutional experience and service to the IFCAI mission.

5.5 The committee's recommendation, then, was that the following be proposed to the General Assembly for election to the Council:

5.5.1 in place of the President (who had not stood for re-election), Diana Droulers;

5.5.2 in place of Adrian Winstanley, as Secretary Treasurer, Stefano Azzali;

5.5.3 as Vice Presidents, Dr Nabil Elaraby (CRCICA), Jason Fry (ICC), Yu Jianlong (CIETAC), Alexander Komarov (ICAC, Russia), William Slate (AAA) and Adrian Winstanley (LCIA);

5.5.4 as Councillors, Abdelwahab El Behi (CCAT), Jens Bredow (DIS), Piotr Nowaczyk (Polish Chamber), Minn Naing Oo (SIAC), Yaneth Quiroz (CANACO) and Nassib Ziadé (ICSID).

5.6 These nominees comprised two persons from Asia, two from North Africa (Arab States), two from Latin America, two from North America, five from Central and Southern Europe, and one from Northern Europe.

5.7 After discussion, the Council accepted the committee's recommendations and it was agreed that the President should put them to the vote of the General Assembly.

5.8 The President expressed his thanks to the committee for undertaking this difficult task, a sentiment echoed by the others present.

5.9 The President asked whether the title "*Secretary Treasurer*" might be abandoned in favour of "*Secretary General*", a proposal supported by Stefano, whether or not he was elected to the role by the General Assembly.

5.10 Jason thought the existing title more apposite, and that the title "*Secretary General*" conveyed a status recognised in the arbitration world that was not commensurate with the IFCAI position.

5.11 The possibility of simply dropping "*Treasurer*" and leaving it as "*Secretary*" was discussed, but it was agreed that a decision should be left to the committee that would review the Constitution.

Note *It was subsequently discovered that Piotr Nowaczyk's term as President of the Arbitration Court at the Polish Chamber had come to an end, and that his appointment at the later General Assembly could not, therefore, stand. The Council (including its new members) will decide how best to proceed.*

6. FINANCES AND MEMBERSHIP

6.1 At the President's invitation, Adrian Winstanley updated the meeting on IFCAI finances and membership.

6.2 As at the end of May 2009, the IFCAI account stood at approximately US\$108,000.

6.3 As at the date of this meeting, there were 37 fully-paid-up members of IFCAI, with another 18 whose subscriptions were outstanding for the current year only.

6.4 The following new members were included in the paid-up 37: the Arab Association for International Arbitration, Paris; the DIFC-LCIA Arbitration Centre, Dubai; the Euro-Arab Association for International Arbitration, Paris; the GCC Commercial Arbitration Centre, Bahrain; and the Sharm El Sheikh International Arbitration Centre, Egypt.

6.5 The subscriptions of the Kuala Lumpur Regional Centre and the Permanent Arbitration Court at the Croatian Chamber of Commerce were outstanding for 2008 and 2009 and these members would, therefore, be struck off, in accordance with the Constitution.

6.6 The following ten members had been struck off since the last General Assembly: the Arab Association for International Arbitration (subsequently re-applied and re-admitted, as advised earlier); Beijing Conciliation Centre; CAMARB, Brazil; CAMM, Madagascar; DIAC, Dubai; Arbitration Court of the Mongolian Chamber of Commerce; Madrid Court of Arbitration; Malta Arbitration Centre; Sri Lanka National Arbitration Centre; and Tahkeem Centre for Settlement of commercial disputes.

7. **INSTITUTIONAL AND NON-INSTITUTIONAL MEMBERS**

7.1 This item had already been discussed under item 5, the IFCAI Constitution. However, it was agreed that, if the distinction was to be maintained, it would be necessary to appoint a new head of the institutional section in place of Dr About-Enein.

8. **IFCAI WEBSITE**

8.1 Diana demonstrated the website in its present form, which had not, she said, changed a great deal since the previous meeting.

8.2 She would report on the website to the General Assembly, with the request that members provide basic information about their institutions, such as contact information, some short introductory text, links to their rules and so forth.

8.3 After some further discussion of the detail of the site, the meeting thanked Diana for her continuing efforts to set up the website, which, it recognised, was not proving an easy task.

9. **RESEARCH COMMITTEE**

9.1 The meeting turned to an email, sent by Loukas Mistelis, of Queen Mary University's School of International Arbitration (SIA), on 22 May, proposing a cooperative research project, to be linked to the SIA's third annual survey on international commercial arbitration.

9.2 Jason queried whether IFCAI need associate itself with any academic group for the purpose of any research project that might be agreed, and thought the better course would be that IFCAI undertake the project itself, but secure the services of a good student to gather and collate the material.

9.3 Bill said that, were some association with an academic body preferred, some other institutions might be considered at least as worthy partners as SIA; for example, one of the Swiss graduate programmes, or the Strauss Institute at Pepperdine.

9.4 After further discussion, it was agreed that the research project first outlined by Stefano, and subsequently championed by Jason Fry (on the enforcement of, and compliance with Awards) should now be pursued.

9.5 Accordingly, the research committee (Stefano, Bill and Jens) was mandated to develop this idea in a detailed brief, as to objectives and methodology.

10. **11TH BIENNIAL IFCAI CONFERENCE**

10.1 The President reminded the meeting that the past three IFCAI conferences had been held in Vienna (in place of Bahrain, 2003); Washington (2005); and New Delhi (2007); with the current conference here in Tunis.

10.2 It was agreed that Eastern Europe and Latin America were the front-runner regions for the 11th Biennial conference, in 2011, and, after discussion, the meeting voted unanimously in favour of Poland.

10.3 The President will contact Piotr Nowaczyk to advise him of this decision and to ask whether the conference should be held in Warsaw, or in some other Polish city.

Note *In light of developments with Piotr's appointment (see above), Diana Droulers, as new President of IFCAI, will contact the new President of the Arbitration Court of the Polish Chamber to discuss these proposals.*

11. **GENERAL ASSEMBLY**

11.1 There were no comments on the agenda for the General Assembly that was to follow this meeting, and at which it was expected that some 20 IFCAI member institutions would be represented.

12. **OTHER BUSINESS**

12.1 Council members thanked the President for having presided over this meeting and, so effectively, over IFCAI during the past 8 years, and said that they were looking forward to working with the new President-elect, whose candidacy they hoped the General Assembly would endorse.

13. **DATES OF NEXT MEETINGS**

13.1 The Council would next meet in Washington on the afternoon of 19 November 2009, the day before the ICSID/ICC/AAA colloquium.

13.2 The Council would then meet in Rio de Janeiro in May 2010, on the occasion of the ICCA conference in that city, at which time a General Assembly would also be held.

14. **CLOSE OF MEETING**

14.1 There being no further business, the meeting was declared closed at 12.30pm.

President

Date